

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN

DIRECTOR

August 24, 1994
AO-94-28

Mr. Mark Govoni
UFCW Local 1445
725 South Street
Boston, MA 02131

Re: Ballot Question Expenditures

Dear Mr. Govoni:

This letter is in response to your July 27, 1994 request for an advisory opinion regarding expenditures and contributions by your union, your union's PAC, and ballot question committees to support or oppose ballot questions.

You have asked several questions. Each question will be addressed separately.

1. May your union's PAC make unlimited expenditures to support or oppose a ballot question?¹

M.G.L. c. 55, s. 6 provides, in pertinent part, that any political committee not organized on behalf of an individual candidate:

may receive, pay and expend money or other things of value for the enhancement of the . . . principle, for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures. [Emphasis added].

¹ As used in this opinion, "expenditure" means payments which are not made to a ballot question committee, and which are not otherwise "contributions" to a ballot question committee. A "contribution" is defined in section 1 of chapter 55 as "a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of . . . promoting or opposing a . . . question submitted to the voters . . ."

Accordingly, expenditures may be made without limit if the expenditures are consistent with the purpose for which the PAC was organized.

2. May your union make unlimited expenditures from its general treasury to support or oppose a ballot question?

The campaign finance law does not restrict your union's expenditures which might be made to support or oppose a ballot question. If your union does not raise funds specifically to influence the voters on a ballot question it would not be considered a "political committee" subject to the campaign finance law and would not be required to register and file periodic reports with this office. See M.G.L. c. 55, s. 1. However, your union must disclose all expenditures, including in-kind contributions made, and liabilities incurred, in an effort to influence voters for any political purpose, on Form CPF 112. See IB-88-01 (a copy of which is enclosed).

3. Must a ballot question committee be set up if your union or its PAC will solicit contributions from others for a campaign, as well as expend funds on that campaign?

Yes. If the PAC or the union intends to solicit contributions to support or oppose a ballot question it must organize a separate ballot question committee for this purpose. If an organization solicits anything of value for political purposes, it must register as a political committee, and where funds are solicited to support or oppose a ballot question committee, the organization would be considered a "ballot question committee."

A segregated account, separate and distinct from the PAC or union account, must be established and managed by the ballot question committee to ensure full compliance with chapter 55 and the regulations issued by this office. The ballot question committee, like all political committees, must register with this office and file periodic reports specified in chapter 55, section 18. You should also note that ballot question committees must dissolve after final determination is made by the voters on the question for which the committee was organized, and all residual funds remaining in the committee's account at that time must be donated to a fund or organization specified in section 18, such as a religious or charitable organization subject to M.G.L. c. 67 or c. 12, s. 8, the Local Aid Fund, or any city or town in the commonwealth. See AO-93-30.

4. May a ballot question committee contribute unlimited funds to another ballot question committee?

As discussed in response to your first question, the general rule, as defined by section 6 of the statute, is that political committees not organized on behalf of candidates may make contributions to other such political committees if such contributions are "for the enhancement of the . . . principle, for which the committee was organized" so long as such expenditure is not primarily for the candidate's or any other

person's personal use. . . ." Where a contribution is made by a ballot question committee to another committee organized to support or oppose the same ballot question, the contribution would likely satisfy this standard. However, contributions to committees organized to support or oppose a different ballot question would not generally "enhance the principle" for which the committee making the contribution was organized.²

5. May your union's general treasury or PAC contribute unlimited funds to a ballot question committee?

(a) contribution of funds by your union's general treasury

As previously discussed in response to your second question, if your union does not raise funds specifically to influence the voters on a ballot question, the union would not be considered a "political committee" subject to the campaign finance law and would not be required to register and file periodic reports with this office. See M.G.L. c. 55, s. 1. However, your union must disclose all expenditures, including in-kind contributions made, and liabilities incurred, in an effort to influence voters for any political purpose, on Form CPF 112. See IB-88-01.

(b) contribution of funds by your union's PAC

Section 6 of G.L. c. 55 contains certain limitations on contributions by political committees. In particular, the third paragraph of section 6 states that political committees which are not organized to support an individual candidate may not contribute more than \$1,000 in any one calendar year to another political committee not organized to support an individual candidate.

Although this paragraph of the statute, on its face, would appear to limit receipt of contributions by ballot question committees, Supreme Court decisions considering the constitutionality of such limitations would not support such an application. As noted in Citizens Against Rent Control v. City of Berkeley, 454 U.S. 297 (1981), "[w]hatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committees there is no significant state or public interest in curtailing debate and discussion of a ballot measure. Placing limits on contributions which in turn limit

² Pursuant to section 26 of Ch. 43 of the Acts of 1994 (section 6B of chapter 55, as amended), which will be effective on January 1, 1995, ballot question committees "may receive, pay and expend money or other things of value solely for the purpose of favoring or opposing the adoption or rejection of a specific question or questions submitted to the voters. A ballot question committee shall not contribute to any other political committee, except that it may contribute to another ballot question committee if such contribution is consistent with the purpose for which it was organized. . . ."

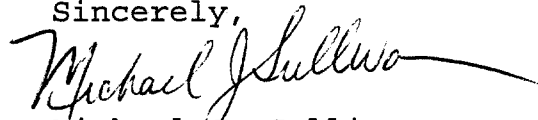
expenditures plainly impairs freedom of expression." Id., 454 U.S. at 300. See also AO-88-32, in which this office concluded that ballot question committees are not subject to section 6's \$1,000 limitation on committees "not organized to support an individual candidate."³

Similarly, although your PAC is generally subject to the \$1,000 limit imposed by section 6, the PAC is not subject to the limitation where it makes contributions to ballot question committees, if the contributions are otherwise consistent with section 6. In other words, if the contributions enhance the principle for which the PAC was organized, and are otherwise consistent with the campaign finance law, they are permissible, even if they exceed \$1,000 in a calendar year.⁴

As previously noted, any contribution by the PAC to a ballot question committee would have to comply with the requirement, imposed by section 6 of M.G.L. c. 55, that such contribution be "for the enhancement of the . . . principle, for which the committee was organized."

This opinion has been rendered solely in the context of M.G.L. c. 55. Please do not hesitate to contact this office if you have any additional questions.

Sincerely,



Michael J. Sullivan
Director

MJS/cp

³ The third paragraph of section 6 may be read as consistent with Berkeley since section 6 does not specifically refer to ballot question committees. The third paragraph's reference to committees "not organized on behalf of an individual candidate," (emphasis added), may reasonably be read to refer to committees organized to support or oppose multiple candidates, i.e., PACs.

⁴ Pursuant to Section 24 of Ch. 43 of the Acts of 1994, the maximum contribution from a PAC to a committee "not organized on behalf of an individual candidate" will be \$500 in a calendar year, effective January 1, 1995. Reading this provision narrowly, as I must since it imposes criminal penalties if violated, and in the context of Supreme Court precedent, I would conclude that it does not impose a \$500 limit on contributions from PACs to ballot question committees.